

# DECISION



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-220392; B-220392.2; **DATE:** March 7, 1986  
B-220392.3

**MATTER OF:** Libby Corporation; Lincoln Electric  
Company; Miller Electric Mfg. Co.;  
**DIGEST:** Southwest Mobile Systems Corporation

Protests that design specifications for welding machines can be met by only one producer and, therefore, unduly restrict competition are without legal merit where the agency establishes that design specifications are necessary to standardize military welding machines and the protesters do not show that the agency's justification for standardization is clearly unreasonable or that a different standard design would increase the likelihood of competition.

Four different firms, Libby Corporation, Lincoln Electric Company, Miller Electric Mfg. Co., and Southwest Mobile Systems Corporation, protest the specifications in invitation for bids (IFB) No. DAAA09-8-B-0787, issued by the United States Army Armament, Munitions, and Chemical Command, Rock Island, Illinois. The protesters argue that only the Hobart Brothers Company can meet the specifications and, therefore, the specifications unduly restrict competition. The Army has postponed bid opening pending our decision.

We deny the protests.

The Army issued the IFB on June 21, 1985, for the 5-year acquisition of 1,361 trailer-mounted welding shops<sup>1/</sup> and an additional single-year acquisition of 91

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<sup>1/</sup> Welding shops include a welding machine and all other equipment usually required for welding operations, from leather aprons and goggles to cylinders of acetylene gas and cutting torches. The welding machine represents the majority of the cost of the welding shop, and its design determines the design of much of the auxiliary equipment in the shop.

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welding machines. This procurement resulted from a decision by the Army in 1978 to standardize welding shops and machines in its inventory. In 1979, the agency surveyed commercially available welding equipment and, in 1980, it sought offers for the production of two prototype trailer-mounted welding shops, along with technical data to be used in developing standard specifications for a welding shop and machines. Of the firms involved in this protest, only Libby and Hobart submitted technical proposals to design and manufacture the prototypes. Libby subsequently withdrew from the competition, and Hobart, the only remaining offeror, received the award. The Army reviewed and modified the technical data supplied by Hobart, resulting in the military specifications for a welding shop and welding machine included in the current solicitation.

#### Positions of the Parties

The protesters contend that the welding machine specifications essentially describe a Hobart commercial product. They state that 90 percent of the drawings are of Hobart components--either detailed design drawings or source-controlled drawings of parts available only from Hobart or Hobart's suppliers. The protesters state that no welding machine producer can compete with Hobart, since it would cost approximately \$3.6 million to retool a facility to produce the Hobart-based machine. Consequently, they argue that, in effect, the Army is conducting a sole-source procurement from Hobart in violation of the requirement for agencies to obtain full and open competition contained in the Competition in Contracting Act of 1984 (CICA), 10 U.S.C.A. § 2304(a) (West Supp. 1985).

The protesters state that several commercial welding machines can meet the Army's needs, and that if the Army used performance specifications instead of detailed design specifications in the current procurement, the agency would save at least 20 percent because of increased competition.

In response, the Army describes its efforts to standardize welding shops and machines while obtaining as much competition as possible. It states that it revised the drawings and specifications produced by Hobart to open up tolerances, identify multiple sources, and use government and industry standard specifications; in this regard, the Army replaced approximately 150 Hobart parts numbers with military, federal, or industry standard parts numbers.

In addition, the Army changed the thickness of materials selected for many sheet metal and fabricated parts to match sizes generally stocked by steel warehouses, and it reduced the original package of 1,800 drawings to 914.

The Army agrees with the protesters that despite this effort the specifications require certain components either to be built in accord with a Hobart design or purchased directly from Hobart. According to the Army, however, no more than seven items with an estimated total cost of about \$1,000 would have to be purchased directly from Hobart in order to meet the specifications. The Army estimates that these seven items represent only about 3.7 percent of the total cost of a welding shop. Moreover, the Army states that the closest Hobart commercial welder to that described in the IFB lacks numerous features required by the specifications; the Army lists many examples of such features in its administrative report. In the agency's opinion, Hobart, like other potential bidders, will have to make many changes to its commercial welder before that product will be able to comply with the specifications.

While the Army believes that its decision is justified by the need for timely and efficient field support, it also believes that standardization of design is a less expensive way of meeting that need than competition based on performance specifications. The agency has provided its estimate of additional costs that would be incurred each time it purchased welding shops and machines based upon performance specifications. These costs include \$400,000 for a spare parts inventory and \$1.4 million for establishing and maintaining material stock numbers for components. The Army estimates the total additional costs for each type of welding machine procured to be \$4.1 million.

#### GAO Analysis

Where, as here, protesters challenge specifications as being unduly restrictive of competition and submit some support for that proposition, the procuring agency must establish prima facie support for its position that the restrictions it imposes are reasonably related to its needs. Deere & Co., B-212203, Oct. 12, 1983, 83-2 CPD ¶ 456. This requirement reflects the agency's obligation to create specifications that permit full and open competition consistent with the agency's actual needs. 10 U.S.C.A. § 2305(a)(1). However, contracting officials

are familiar with the conditions under which the goods or services have been used in the past and are in the best position to know the government's actual needs. Therefore, if the agency provides the necessary support for the specifications, the burden then shifts back to the protester to show that the specifications are clearly unreasonable. Bataco Industries, Inc., B-212847, Feb. 13, 1984, 84-1 CPD ¶ 179.

Specifications based upon a particular manufacturer's product are not improper in and of themselves, and a protest alleging that specifications were "written around" design features of a competitor's product is without merit where the agency establishes that the specifications are reasonably related to its minimum needs. Amray, Inc., B-208308, Jan. 17, 1983, 83-1 CPD ¶ 43.

There are many reasons why an agency's minimum needs impose some restrictions on competition. One recognized need is to standardize the equipment used by the agency. Julie Research Laboratories, Inc., B-199416, June 16, 1981, 81-1 CPD ¶ 493; Jazco Corp., B-193993, June 12, 1979, 79-1 CPD ¶ 411. Here, the Army has determined that its welding needs require standardization, and the protesters have not shown that determination to be unreasonable.

As the protesters point out, except for the welding machine engine, welding equipment has a life expectancy of approximately 12 years. The welding shops will be deployed throughout the world. Army personnel must be trained in the use, maintenance, and repair of the equipment, and the agency must publish and distribute maintenance and repair manuals. An extensive spare parts inventory must be developed and maintained for each type of welding machine purchased by the Army. The Army estimates that with necessary testing, training, provisioning, etc., it requires 2 years and, as noted above, \$4.1 million to place a new welding shop and welding machine into field use.

The protesters argue that the Army has overestimated the effort necessary to support an inventory of diverse welding machines. They state that training costs are relatively low, that provisioning and manual costs should be under \$100,000, and that commercial parts for many welding machines are readily available worldwide. One of the protesters (Libby) obtained prices for welding machines from another protester (Miller) and from Hobart. Based upon these quotations, Libby contends that machines

purchased from Hobart based upon the design specifications will cost over \$12 million more than machines purchased competitively using performance specifications. The protesters' disagreement with the Army about the savings to be achieved by standardization is the essence of their protest. Mere disagreement, however, does not establish that the agency's judgment is unreasonable. Polymembrane Systems, Inc., B-213060, Mar. 27, 1984, 84-1 CPD ¶ 354. The protesters' estimates of the relative costs of standardization are unsupported and, therefore, speculative and do not meet their burden of establishing that the use of design specifications exceeds the actual needs of the Army.

We have no evidence that the Army intends to narrow the field of competition or to favor Hobart specifically. The specifications in this procurement grew out of a procurement in 1980 that was unrestricted, and the protesters at that time had the opportunity to submit offers to develop standard prototypes. Similarly, the specifications here do not exclude any welding machine producer; no firm has claimed that it cannot meet the specifications, only that Hobart has an advantage. See Julie Research Laboratories, Inc., B-199416, supra, where, in a case similar to this one, we upheld the Army's designation, following a competitive procurement, of "required source" and "suggested source" components because of a standardization requirement. Moreover, the protesters have not suggested any way in which Hobart's claimed advantage can be reduced short of using performance specifications, so that different models of welding machines would be acceptable. In other words, the protesters have not suggested that a different design would increase competition, only that the Army should eliminate any design requirements that prevent offerors from proposing a variety of slightly modified commercial welding machines.

We conclude that the Army undertook to draft military specifications that would permit full and open competition while standardizing the welding shops and machines used by the military. The protesters have not established that the decision to do so was unreasonable, or that standardization can be achieved in any other manner that would increase the likelihood of competition.

While we deny the protests, we note that whether the Army's 8-year standardization effort will achieve the economies and full and open competition sought will not be known until the current specifications are used to procure welding machines. In view of the statutory requirement for

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agencies to draft specifications that permit full and open competition consistent with their actual needs, the Army has a duty to monitor the results of its welding machine procurements to insure that the current specifications are not restrictive.

The protests are denied.

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